

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

75-1012

In the
United States Court of Appeals
FOR THE SECOND CIRCUIT

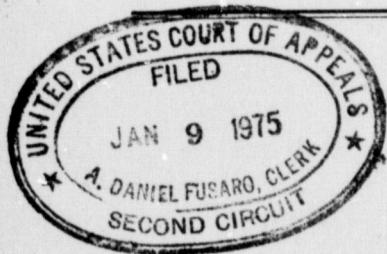
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T-3330
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P/S

UNITED STATES OF AMERICA
Plaintiff-Appellee
vs.
EDWARD W. REED
Defendant-Appellant

On Appeal from United States District Court
For The District of Connecticut

BRIEF AND APPENDIX
FOR DEFENDANT—APPELLANT
RE: DENIAL OF MOTION FOR NEW TRIAL



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BRIEF FOR DEFENDANT—APPELLANT
RE: DENIAL OF MOTION FOR NEW TRIAL

QUESTIONS PRESENTED

1. Did the Court err in denying defendant's motion for new trial?
2. Did the Court err in overruling defendant's claims that;
 - (a) Evidence favorable to defendant was suppressed by government;
 - (b) That although government's principal witness has testified falsely in each of the three trials concerning

promises made to him in exchange for his testimony, the government did nothing to correct it;

- (c) That the credibility of Ralph Maselli as a witness was an important issue in each of the three cases and evidence of any understanding or agreement made in exchange for his cooperation would be relevant to his credibility and the jury was entitled to know it;
- (d) That the testimony of Mathew Maselli in Criminal Case Number 12,604 was false and permitting it to go uncorrected is incompatible with rudimentary demands of justice;
- (e) That upon a retrial there is a significant chance that the disclosures revealed on the motion for a new trial could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction;
- (f) That the suppression by the prosecution of evidence revealed on the motion for a new trial violates due process?

3. Did the Court err in finding that a new trial would clearly not be likely to produce an acquittal of the petitioner in Criminal Case Number 12,580?

4. Was the Court in error in not finding that the withholding of all of the promises made to both Ralph and Mathew Maselli in exchange for their testimony together with the testimony of Raymond Devlin and Arthur Murgo could have induced a reasonable doubt in the minds of enough jurors to avoid conviction?

STATEMENT OF FACTS

The petitioner, Edward W. Reed, has moved for a new trial after three separate criminal convictions by a jury, in cases, Nos. 12,522, 12,580 and 12,604. The first of these cases, Criminal No. 12,522, was a gun violation case wherein a Three Count indictment charged that on January 12, 1970, he had unlawfully transported firearms in interstate commerce. On January 12, 1970, the jury returned a verdict of guilty on each of the three counts. On March 16, 1970, he was sentenced on the first count under Title 18 USC sec. 922(g) and 924(a) to serve five years imprisonment and to pay within thirty days a committed fine of \$5,000.00. On the second and third counts the Court imposed five year sentences. This conviction was affirmed by the Court of Appeals without opinion on July 22, 1971. The government's case depended almost entirely upon the testimony of Ralph Maselli without whom there could have been no evidence to carry the case to the jury.

His second conviction, Criminal No. 12,580, involved three counts of armed robbery, arising out of a holdup of the Norwalk Branch of the Fairfield Bank and Trust Company. On March 10, 1970, the jury returned a verdict of guilty on each of the three counts. On March 16, 1970, pursuant to the provisions of Title 18 USC sec. 2113(d), the Court sentenced Reed on the third count to serve a 25 year sentence and to pay a committed fine of \$10,000.00; on the second count he was sentenced to serve 20 years; and on the third count a 10 year sentence was imposed; the sentence of the latter two to be served concurrently with the sentences imposed on the first count. It was further ordered that he reimburse the government for the attorney's fees and expenses paid out in his behalf under the Criminal Justice Act. The Court found from the

evidence, that he had received directly not only \$17,000.00 in cash from the Norwalk bank robbery, but had also shared in an additional sum of \$15,000.00 allotted among the robbers for prospective attorney's fees. This conviction was affirmed on March 3, 1971.

The third case, Criminal No. 12,604, alleged three counts of armed robbery, involving the holdup of the Colonial Bank and Trust Company at Meriden.

On April 24, 1970, the jury returned a verdict of guilty on each of the three counts and on May 25, 1970, the Court sentenced him to an effective term of 20 years under Title 18 USC sec. 4208(a) (2); said term to run consecutively to the two prior sentences imposed, but reserving to the discretion of the Parole Board, when he might be released. On January 12, 1971, this conviction was affirmed.

The petitioner did not take the stand in the first two cases tried, Nos. 12,522 and 12,580; but he did testify in case No. 12,604.

The chief government witnesses in the third case No. 12,604 upon whom the government relied were Ralph Maselli and his brother, Mathew Maselli.

Sometime after the spring of 1971, information came to the petitioner that Ralph Maselli had received bank robbery money as part of a deal in exchange for his testimony against the petitioner Reed, and that Raymond Devlin who had been a fugitive from justice had been apprehended and was in custody at the Federal Prison in Atlanta that he was prepared to disclose the names of the three men who had robbed the Fairfield Bank and Trust Company, (Criminal No. 12,580) and

the petitioner engaged an attorney, one George Johnson to secure an affidavit from Devlin and to move for a new trial on his behalf. George Johnson did file a motion but while in the middle of the proceedings, he left the practice of the law in Connecticut and moved to Colorado where he accepted a position, teaching law at a university. (Hearing on motion T. Vol. II, pp. 250-254)

Raymond Devlin testified that the three men who held up the bank in Case Criminal No. 12,580 were himself, Ralph Maselli and Mathew Maselli. (Hearing on motion, T. 3, 4, 31) His testimony contradicted that given by Ralph Maselli at the trial of case Criminal No. 12,580 to the extent that the activities to which he testified as those of the petitioner Reed were, in fact, those of Mathew Maselli. (Hearing on motion, T. Vol. I, pp. 26, 27, 30, 31)

About August 29, 1969, Assistant U. S. District Attorney John V. Cassidento agreed with Ralph Maselli that for his promise to cooperate with the government, he would not prosecute him for any of the bank robberies in which he was implicated; that the monies seized by virtue of the search warrants Exhibits 1 and 2 would be returned to him if it was not established to be bank robbery money and that implicit in the deal was the understanding was that Ralph's brother, Mathew would not be prosecuted. (Hearing on motion, T. Vol. II, 187, 188) In the office were two other Assistant U.S. Attorneys, Daniel Sagarin and Richard Crane to whom, U.S. Assistant Attorney Cassidento related the whole story.

U. S. Attorney Sagarin, promised Mathew Maselli that for his testimony, he would drop the prosecutions to known charges in which indictments had been returned and of pend-

ing investigations. (Hearing on motion T. of 7/31/73, pp. 32-33)

U.S. Attorney Crane and U.S. Attorney Sagarin prosecuted cases Criminal Nos. 12,522, 12,580 and 12,604.

Ralph Maselli testified in the three cases, Criminal Nos. 12,522, 12,580 and 12,604.

Mathew Maselli testified for the government in one of the cases, Criminal No. 12,604.

Mathew Maselli when asked whether he had been promised anything by the government in exchange for his testimony in each of the three cases in which he testified, answered that he had been promised immunity from prosecution and withheld two of the promises, to wit, the promise of the return of confiscated monies and the promise of non-prosecution for his brother, Mathew.

Mathew Maselli had been told by his brother, Ralph that the government had promised Ralph, freedom from prosecutions for both himself and Mathew Maselli.

In each of the three cases, Criminal Nos. 12,522, 12,580 and 12,604, Ralph Maselli was the government's chief witness upon whom it relied for conviction. (Memo of Decision, p. 19, 2nd par.)

In case Criminal No. 12,522, the Court ordered the government to disclose to defendant's counsel the terms of its promise of immunity to Ralph Maselli (T. Criminal No. 12,522, p. 308) and to turn over to defense counsel material in possession of the government favorable to the defendant in accordance with Brady against Maryland. (T. Criminal No. 12,522 pp. 510, 511) The response of the government was

that it had no exculpatory material under Brady against Maryland. In its opening argument, the government told the jury "we didn't hide from you *their inducements*". (T. Criminal No. 12,522, p. 562) The Court acknowledged in its charge that no one had seen either of the revolvers in the hands of the defendant. (T. Criminal No. 12,522, p. 588)

In case Criminal No. 12,580, the government argued to the jury that it was forced to rely for conviction, on the testimony of the accomplice. (T. Criminal No. 12,580, pp. 1395-C, 1395-D), meaning Ralph Maselli.

In each of the three cases, Ralph Maselli was specifically asked what he had been promised in exchange for his testimony. (T. Criminal No. 12,522, pp. 296, 297; T. Criminal No. 12,580, p. 674; T. Criminal No. 12,604, p. 483)

Ralph Maselli had been promised by the government (a) immunity or non-prosecution for all criminal matters, both Federal and State, which had been consummated up to the time when he began to cooperate (T. Criminal No. 12,522, pp. 296, 297, T. Criminal No. 12,580, p. 674; T. Criminal No. 12,604, pp. 482, 483); (b) The return of confiscated money in Federal custody. (Hearing on motion, pp. 83-86 and (c) Immunity from prosecution for his brother, Mathew Maselli, (Hearing on motion, T. pp. 106, 107, 114-116). After these promises were made to him, Maselli gave a written statement, (Hearing on motion, T. p. 88).

The motions were filed on behalf of Edward Reed in the above three cases, when for the first time during the trial of the case of State of Connecticut vs. John Reed at which Ralph Maselli testified as a witness for the state it was disclosed that in addition to the promise of immunity, Ralph Maselli had

been promised, as an inducement for his statement which he gave to the authorities both State and Federal, the return of monies which had been confiscated and presently in the custody of federal authorities and immunity from prosecution for his brother.

ARGUMENT

In its Memorandum of Decision, the Court at p. 3 noted that during the hearing on his petition for a new trial, the petitioner did not testify. In this, the Court was in error. (Hearing on motion, Vol. II. pp. 244-273). To point out this erroneous observation in its memorandum of decision, it must have been an influencing factor in arriving at a final decision so that the Court's decision was predicated, in part, upon an erroneous assumption.

The information affecting the issue of credibility of Ralph Maselli was deliberately suppressed by the government. It had knowledge prior to Maselli's written statement of August 29, 1968 that (a) Ralph Maselli was to be given immunity from prosecution; (b) that \$7,844.00 seized under search warrants, Exhibits 1 and 2, were to be released to him, and that (c) his brother, Mathew Maselli was not to be prosecuted for any of his crimes. Assistant U. S. District Attorney, Cassidento made the promises to Maselli. However, before Cassidento's term of service in the U. S. Attorney's office was terminated at about September 15, 1969, he related to the other two Assistant U. S. Attorneys, Assistant U. S. Attorney J. Daniel Sagarin and Assistant U. S. Attorney, Richard P. Crane the whole story of the deal he had made with Ralph Maselli in exchange for his testimony. Assistant U. S. Attorney Sagarin

who took over from Cassidento the duties of prosecuting Reed, to get Mathew Maselli to testify for the government, made an agreement with him wherein he promised Mathew Maselli freedom from prosecution on all matters, including those under investigation.

"The prosecutor's office is an entity and as such, it is the spokesman for the government." *Giglio v. United States*, 405 U.S. 150, 154.

The Court concedes that "the testimony of Ralph Maselli was essential to the government . . . Without it there would have been little likelihood of an indictment and insufficient evidence to warrant the case being submitted to a jury." (Memo. of Dec. at p. 19). Hence, Ralph Maselli's "credibility as a witness was therefore an important issue in the case, and evidence of any understanding or agreement" made in exchange for his cooperation "would be relevant to his credibility and the jury was entitled to know it" *Giglio, supra*, 154.

Ralph Maselli testified in each of the three cases.

In Criminal Case No. 12,580, involving the robbery at the Fairfield Trust Company Bank, Ralph Maselli testified that the three men who committed the robbery were himself, Raymond Devlin and Edward Reed. In that trial, the issue was whether Edward Reed was, in fact, one of the robbers. The defense argued that one of the robbers was Mathew Maselli and not Reed. During Reed's trial, Devlin had been a fugitive from justice and was unavailable. Sometime after Reed's conviction, Devlin was apprehended and at the hearing on Reed's motion for a new trial, Devlin testified that the three robbers were himself, Ralph Maselli and Mathew Maselli.

In each of the three cases, Ralph Maselli when asked what he had been promised in exchange for cooperation, he deliberately concealed two of the three promises made to him, to wit, a promise of the return of \$7,844.00, and a promise of non-prosecution of his brother, Mathew. In each of the cases, the non-disclosure was a deception practiced upon the Court and the Jury. The reason for the concealment is obvious. The disclosure of a promise to return money seized under search warrants, in the light of all the circumstances, which included two bank robberies, which had been committed the day before the issuance of the search warrants, and the revelation that the day before the issuance of the search warrants Exhibits 1 and 2, the Maselli brothers had been identified as persons engaged in the exchange of stolen money, would have proved to be extremely embarrassing to those involved and certainly destructive of the credibility of the witness. Add to this, the bargain for Mathew's non-prosecution of crimes in which he was involved, the weight of Ralph Maselli's testimony would have undoubtedly, collapsed completely. Immunity for himself, the return of money and freedom from prosecution for his brother provided a powerful inducement for perjury to one who had been in the business of robbing banks. His image before a jury would no longer have been that of a repentent sinner, but instead, it would have been that of a cold, hard bargainer, without an ounce of remorse. The prosecution could not have been so naive as not to appreciate the undermining effect of the full disclosure of the promises made to Ralph, nevertheless, the prosecution allowed the false evidence to go uncorrected.

In Criminal Case No. 12,604, the two witnesses were the Maselli brothers, Ralph and Mathew. Mathew to portray

himself as a repentent sinner who was testifying without the promise of immunity told the jury that he was in the hope that the government might reward his good deed with leniency. This was the blackest of lies and deliberate perjury. His answers were a deception practiced upon the Court, the Jury and the Petitioner. Obviously, the purpose was to create an image of a repentent sinner, willing to atone for his misdeeds and tell what he knows, even though he did so at the risk of exposing himself to prosecution and punishment. Again, the prosecutor did nothing to correct the wrong which both Mathew and the prosecutor knew or should have known. Allowing the false evidence "to go uncorrected is incompatible with rudimentary demands of justice." The suppression justifies a new trial irrespective of the good faith or bad faith of the prosecution. *Giglio v. United States*, 405 U.S. 150 at p. 153. "When the reliability of a given witness may well be determinative of guilt or innocence, non-disclosure of evidence affecting credibility falls within this general rule" *Giglio, supra* 154. There is no dispute of fact that the reliability of Ralph and Mathew Maselli were determinative of the guilt or innocence of the petitioner. This fact is conceded by the Court. (Memo. of Dec. p. 19). However, here, as *Giglio, supra*, at p. 154, the government depended in each of the three cases entirely on Ralph Maselli's testimony. Maselli's credibility as a witness was therefore an important issue in the case, and, evidence of any understanding or agreement as to future prosecution of himself and of his accomplice brother, Mathew and the return of confiscated money, amounting to some \$7,844.00, would be relevant to his credibility and the jury was entitled to know it. *Giglio, supra* at pp. 154-155.

"In many ways the prosecutor, by accident or design, may improperly subvert the trial. The primary safeguard against abuses of this kind is the ethical responsibility of the prosecutor, who, as so often has been said, 'may strike hard blows' but not 'foul ones'." *United States v. Ash*, 413 U.S. 300 at p. 320.

While the movant is not required to show the probability of a different verdict upon retrial, setting aside a conviction is only called for when there is "a significant chance that this added item, developed by skilled counsel as it would have been, could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction." *United States v. Miller*, 411 F.2d 825, 832; *United States v. Kahn*, 772 F.2d 272, 287.

"The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution". *Brady v. Maryland*, 373 U.S. 83 at p. 87; *De Christoforo v. Donnelly*, 473 F.2d 1236, 1240-1241.

"Here the government's case depended almost entirely on Taliento's testimony; without it there could have been no indictment and no evidence to carry the case to the jury." *Both Ralph and Mathew's credibility as witnesses* were therefor an important issue in the case, and evidence of any understanding or agreement as to a future prosecution and return of confiscated money would be relevant to their credibility and the jury was entitled to know it. *United States v. Tashman*, 478 F.2d 129, 131.

The Court recognized that if the promises were made and they were not disclosed, such undisclosed evidence could have assisted the defendant in presenting his case in a manner so as

to create a reasonable doubt in the minds of jurors and under such circumstances the Court would be required to set aside the convictions and order new trials. However, the Court concludes by saying that it finds no undisclosed promises were, in fact, made. (Memo of Dec. p. 20) This finding is in direct conflict with the record as established by the testimony given by U. S. Assistant Attorneys, John V. Cassidento, Richard P. Crane and J. Daniel Sagarin on July 25, 1973, July 30, 1973 and July 31, 1973 at the Hearing on the motion for a new trial.

The Court admits "that Ralph Maselli was motivated by his own desire, testified in a subsequent state court trial that he had been promised this money does not make it so. All the testimony of the three government prosecutors is to the contrary" (Memo. of Dec. p. 18). This is contrary to the testimony given by the three government witnesses, Arthur Murgo, Ralph and Mathew Maselli. However, assuming for argument's sake, that Maselli was so motivated as the court stated, was not this an important fact to be before the jury together with all the surrounding circumstances for it to determine the credibility of the witness? This is a fact which presented a significant chance that this added item, developed by skilled counsel as it would have been, could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction." *United States v. Miller, supra*, 832.

Part two of the opinion concerns itself with the motion for a new trial on the ground of newly discovered evidence. (Memo. of Dec. pp. 20-25) Its decision is based upon the finding that "a new trial would clearly not be likely to produce an acquittal of the petitioner". (Memo. of Dec. p. 25) To arrive at this conclusion, the Court had to overlook the record of the proceedings in the trial of Criminal No. 12,580 which revealed a

serious dispute with respect to the identity of the third person as to whether he was Edward Reed or Mathew Maselli. The Court failed to consider all of the evidence to wit; Devlin's testimony together with non-disclosure of the promise of non-prosecution of his brother, Mathew and the return of the confiscated money, all of which together would have made a conviction virtually impossible.

The fact that the Court chose not to believe Devlin is not determinative. The controlling factor is whether all of the evidence which includes that given by Devlin, the physical dimensions of Reed and Mathew Maselli and all of the other evidence that has since come to light could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction. (*United States v. Miller, supra*) and not whether the Court chooses to believe Devlin. He is one block of evidence to be evaluated in the light of all the other evidence. The record of the trial of Criminal Case No. 12,580 fails to support the Court's position with regard to its view on the outcome of a new trial. It is not for the Court in this hearing to substitute its judgment on the final outcome of a new trial for that of the jury. However, we acknowledge that if the record of the trial. (Criminal Case No. 12,580) shows that the evidence is such that it clearly appears that a new trial would not change the result, a motion for a new trial should be denied. But since since the record of that case makes clear that the question of the identity of the third robber rested solely on the testimony of Ralph Maselli's identification, Devlin's new evidence refuting that claim places a different light on the matter.

Irrespective of whether or not the Court believed Devlin, the controlling factor is, if the testimony of Devlin combined with the information disclosed during the hearing for a new

trial with respect to the return of the confiscated monies, the agreement between Assistant U. S. Attorney, Cassidento and Ralph in which both understood that it was implicit in their agreement that Mathew was not to be prosecuted and the promise of Sagarin to Mathew, not to prosecute him for matters for which he was under indictment and for matters under investigation, as hereinbefore fully discussed, "could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction". *United States v. Miller, supra*, 832.

CONCLUSION

For the reasons assigned, the Appellant, Edward Reed respectively urges that the judgment denying the Appellant's Motion for a New Trial in Criminal Cases Nos. 12,522, 12,580 and 12,604 be reversed and that new trials be ordered in each of those cases.

Respectfully submitted,

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APPENDIX TO THE BRIEF OF THE
DEFENDANT—APPELLANT

RE: DENIAL OF MOTION FOR NEW TRIAL

I

RELEVANT PORTIONS OF THE PROCEEDINGS IN THE TRIAL OF CASE
CRIMINAL NO. 12,522, UNITED STATES OF AMERICA v. EDWARD
REED IN JANUARY OF 1970. THIS WAS THE FIRST OF THE THREE
CASES TO BE TRIED

RALPH MASELLI called as a witness on behalf of the Govern-
ment testified on direct examination:

Q. Mr. Maselli, there is a question everybody wants to know,
and I will ask you now. Will you tell the ladies and gentle-

men of the jury whether you have been promised anything in exchange for testifying?

A. Yes, sir.

Q. Now can you tell us to the best of your recollection what it was that you were promised and for what?

A. I was promised immunity from prosecution.

Q. Immunity from prosecution on your pending charges as well as —

A. On all criminal matters.

Q. On all criminal matters which had been consummated up until the time you began to cooperate?

A. Yes, sir.

Q. And that included Federal charges?

A. Federal and State charges. (Criminal No. 12,522, T. pp. 296-297)

• • •

At the conclusion of the direct examination of Ralph Maselli in case Criminal No. 12,522, counsel for the defendant moved that any statements which Ralph Maselli has previously given to any agent or official of the government, be turned over to counsel for his "examination and use in cross-examination; whether or not such statements were in writing or had been electronically or mechanically recorded etc." (Criminal No. 12,522, T. p. 299)

"The COURT: The Court continued Mr. Tiernan's request as a demand under the Jencks Act, 18 USC Section 3500"

"The Government is directed to comply. If you have material here it may be marked now in the usual manner as Court

Exhibits for Identification and then turned over to Mr. Tiernan for his use." (Criminal No. 12,522, T. pp. 299-300)

"Mr. TIERNAN. Yes. I have a copy of the statement described by Mr. Sagarin. Of course, if there are any other statements or recordings other than the one which Mr. Sagarin has described, I of *course* want those also.

"Mr. SAGARIN. Of course we would turn them over, Your Honor.

"I represent, as an Officer of the Court, and I assume it is my duty under the Jencks Act, it is the only statement we have from Mr. Maselli which has either been electronically recorded or reduced to writing or is the result of any interview." (Criminal No. 12, 522, T. pp. 300-301)

• • •

The Court further observed:

"But I simply do not propose to wade through materials relating to ten bank robberies and one murder charge, simply because the witness testified, as indeed he is required to, not only as to his prior felony convictions, but as to the terms of his promise of immunity." (Criminal No. 12-522 T. p. 308).

• • •

At the conclusion of the Government's case, the following took place:

"Mr. TIERNAN. If your Honor please, at this time the defendant would move for the production of materials in the hands of the prosecution which would be of assistance to the defendant under the authority of *Brady v. Maryland*.

"The COURT. I would like to get on the record any and all motions the defendant has to make at this stage, before I rule on any of them.

"This, I take it, is your *Brady* motion.

"Mr. TIERNAN. Yes, Your Honor —" (Criminal No. 12,522 T. pp. 499, 500)

° ° °

"Mr. SAGARIN.

"The Government's representation there is we have no exculpatory material under *Brady against Maryland*" (Criminal No. 12,522, T. pp. 504-505)

° ° °

"The COURT. Secondly, the defendant's motion requesting the Court to direct the government to turn over to defense counsel for its use any material in possession of the government favorable to the defendant, in accordance with the case of *Brady against Maryland* — the Court does grant that motion, and orders the government to comply with that rule . . . I have made that complete and unequivocal order under *Brady* as is required by the record in this case" (Criminal No. 12,522 T. pp. 510, 511)

In rebuttal, the government argued, "We didn't hide from you their inducements. We didn't hide from you the terms under which they were testifying". (Criminal No. 12,522 T. p. 562.)

In its *charge* to the jury, the Court said:

"In the last analysis, no independent, supporting evidence is absolutely necessary in this regard, but you should not convict

a defendant upon the unsupported testimony of an accomplice, unless you believe that unsupported testimony of an accomplice beyond a reasonable doubt. An accomplice is entitled to the same consideration, and must have his testimony measured in the same way, as any other witness, including his interest in the verdict which you are called upon to render". (Criminal No. 12,522 T. p. 596).

II

RELEVANT PORTIONS OF THE TRIAL, CASE CRIMINAL NO. 12,580,
UNITED STATES OF AMERICA V. EDWARD REED, THE SECOND OF
THE THREE CASES TRIED

RALPH MASELLI, produced as a witness on behalf of the government testified on direct examination:

Q. Mr. Maselli, what have you been promised for your cooperation?

A. Immunity from prosecution. (Criminal No. 12,580 T. p. 674)

• • •

Q. And with what agents of the FBI, or what members of the United States Attorney's Office, did you reach this agreement?

A. Ray Connolly of the FBI.

Q. Special Agent Connolly, sitting in the back of the courtroom?

A. Yes, sir.

Q. Second Row?

A. Mr. Cassidento, who used to be —

Q. Who was an Assistant United States Attorney at the time?

A. Yes, sir. (Criminal No. 12,580 T. p. 674)

• • •

Cross Examination:

Q. Can you tell me what was offered to you at that time in return for your cooperation?

A. Oh — there's two or three meetings with the Federal prosecution at that time. Sometimes I wasn't present. My lawyer was present. There was a couple of incidents where I refused to cooperate.

Q. What was offered to you? That is what I am asking?

A. I see. Well, the end results was that I would receive complete immunity. (Criminal No. 12,580 T. p. 773)

In the opening argument to the jury, United States District Attorney said:

"But the real issue in this case, and the issue which you have got to recall, is whether Mr. Reed was one of the bank robbers" (Criminal No. 12,580 T. 1385-1386-C)

• • •

Well, Mr. Holmes isn't here and that is unfortunate. Mr. Holmes is probably the one man in the bank who really got a good look at Mr. Reed, who might have been able to describe him (Criminal No. 12,580 T. 1386-L)

Defense counsel in his summation to the jury on the identity of Reed as one of the robbers said:

"Now also consider his build. I think your observation will be that Mr. Reed is fairly slim, that in that respect he does not match the description of that third person that has been given by anyone who was in that bank that day." (Criminal No. 12,580 T. 1393-G)

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"Now you have heard I asked Mr. Maselli what his brother looked like — I think his testimony was to the effect that there was approximately one inch difference in their height, maybe ten pounds difference in their weight.

"Now I ask you to look at Mr. Reed and take a look at him. I don't think he fits that description that was given by the employees and customers in the bank. But I ask you to compare that description with what Mr. Maselli said about his brother . . . He got to tell about what his brother looks like, because it is easily determined fact." (Criminal No. 12,580 T. 1392-N)

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In rebuttal the Government argued:

"Nor is the fact that Mr. Reed stands up here today and says, 'Look, See? I'm skinny.

"Where was anybody to testify what he looked like back in January 9, of 1969?

"Maybe he was a little heavier. Maybe he hadn't been eating as well. Maybe he specifically took off some weight. (Criminal No. 12,580, T. p. 1394-x)

° ° °

"You are not always able to have an eye witness who saw a man without a mask for ten minutes, come in and identify him without any question.

More often, you have a case like this and you are forced to rely on the accomplice testimony." (Criminal No. 12,580 T. p. 1395d)

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The Court in its charge to the jury said: "And the government's principal witness was Mr. Maselli, that is Ralph Maselli, . . ." (Criminal No. 12,580 T. p. 1433) "And Maselli's brother, Mathew Maselli received \$5,000.00 for the reasons that Maselli explained. (Criminal No. 12,580 T. p. 1437)

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III

RELEVANT PORTION OF THE PROCEEDINGS IN THE TRIAL OF CASE CRIMINAL NO. 12,604, UNITED STATES OF AMERICA V. EDWARD REED.

—————

On direct examination RALPH MASELLI called as a witness testified:

Q. Now, in return for your promise to cooperate, Mr. Maselli, what did the Government promise you?

A. Immunity.

Q. Immunity specifically from what?

A. From prosecution for all outstanding — I guess you could say crimes.

Q. And who did you reach this agreement with?

A. The United States Attorney.

Q. Who, specifically?

A. John Cassidento.

Q. That is former Assistant United States Attorney John Cassidento?

A. Yes, sir.

Q. Did you reach this agreement with anyone as a member of the FBI?

A. Yes, also a member of the FBI, Ray Connolly. (Criminal No. 12,604 T. p. 483)

• • •

MATHEW MASELLI called as a witness on direct examination testified:

Q. Now Mr. Maselli, in return for your testimony here today, have you been promised anything absolutely anything by the Federal Government

A. No.

Q. Have you been promised anything by the State Government for your testimony here today?

A. No.

Q. Have either I or anybody else in the Federal Government told you that as a result of your testimony here today that either charges pending against you would be dropped, or possible charge against you would be dropped?

A. Other than the ones that I have already been — the ones that are being dismissed, no certainly not.

Q. No promises have been made to you whatsoever concerning your testimony?

A. No, sir, (Criminal No. 12,604 T. 743)

On cross-examination:

"Q. Did Agent Connolly or anybody else indicate to you in return for your cooperation in this matter that you wouldn't be prosecuted as an accessory?

"A. No.

"Q. Nobody ever said that whatever cooperation you give to the government will be of benefit to you?

"A. No one ever literally said to me you'll be regarded or benefit from this in any way — No.

"Q. Did you ever get the impression from speaking to anybody in connection with this case?

"A. I'm kind of keeping my fingers crossed. If you want my opinion — but, nobody ever said it, no.

"Q. Did you reach any conclusion in your mind that if you cooperated you wouldn't be prosecuted?

"A. No, I never reached any conclusion. I certainly don't hope to be prosecuted, but no one ever did say that to me."
(Criminal No. 12,604, T. pp. 757-758)

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IV

RELEVANT PORTIONS OF THE PROCEEDINGS ON THE HEARING OF THE MOTIONS FOR NEW TRIALS IN CASES CRIMINAL NOS. 12,522, 12,580 AND 12,604.

EDWARD J. DEVLIN called as a witness on behalf of the petitioner, on direct examination, testified:

That between ten and eleven o'clock on the morning of January 9, 1969, he together with Ralph and Mathew Maselli entered the Fairfield Bank and Trust Company at Norwalk to rob it; that Edward Reed was not among them. (Hearing on motions, 7/18/73, vol. I, T. pp. 2, 3, 29, 30, 31, 41)

RALPH MASELLI called as a witness on behalf of the petitioner on direct examination testified:

"Q. Well, you had been, and you were assisted by your brother, weren't you?

A. At times, yes.

"Q. And that was the exchange of stolen money for bills of other denominations which couldn't be traced?

"A. Right." (Hearing on motion, vol. I, pp. 82, 83)

* * *

Mr. FASANO.

"Q. In August of 1969 didn't you give a statement in writing to either the government or to the State?

"A. Yes.

"Q. And you gave that statement after you were given certain promises?

"A. Yes.

"Q. Weren't you permitted to keep the money that was taken?

"A. Some of the money I received back, and some of it is still in Federal custody.

"Q. How much did you receive back?

"A. \$1,000.00."

By Mr. Fasano:

Q. Do you remember that?

A. Yes.

Q. And did you receive the \$1,000.00?

A. Yes. (Hearing on motion, T. vol. I, pp. 84, 85)

• • •

Q. Your arrangement was that you were to receive some of the confiscated money back?

A. Yes, right. (Hearing on motion, T. Vol. I, p. 85)

• • •

By Mr. Fasano:

Q. And still on the same page, 360 —

"Question: You expect to receive some more money back, do you?

"Answer: Yes, sir.

"Question: That is also part of the arrangement, isn't it?

"Answer: Yes, sir."

Q. Okay, do you recall that?

A. Yes, sir.

Q. And that was so, wasn't it?

A. Yes. (Hearing on motion, T. vol. I, p. 86)

• • •

Q. In August of 1969 didn't you give a statement in writing to either the Government or to the State?

A. Yes.

Q. And you gave that statement after you were given certain promises?

A. Yes. (Hearing on motion 7/18/73 T. vol. I, p. 88)

• • •

"Question: They told you you would have complete immunity and so would your brother?

"Answer: Yes."

"Question: Is that right?

"Answer: Yes, sir.

"Question: Is that a true statement?

"Answer: Yes, sir. (Hearing on motion 7/18/73 T. vol. I. p. 93)

• • •

"Question: That is money stolen from banks and then exchanged for other monies so that the money couldn't be traced to you or as stolen money?

"Answer: Yes, sir.

"Question: This was done out of the state and in the state?

"Answer: Yes, sir.

"Question: You were assisted in that by your brother?

"Answer: Yes, sir.

That's true, isn't it?

Answer: And for these things, these activities of your brother, the participation with you; destroying the evidence, and on the occasion that you went to Branford, and the money was in the car, and you had two packages, one of materials and one of bank money, you saw to it that your brother too got immunity?

"Answer: Yes. (Hearing on motion 7/18/73 T. vol. I, pp. 106, 107)

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Question: You were asked what was the consideration?

Answer: And I said immunity.

Question: And you stopped there?

Answer: Well, the sin of omission. I just omitted it, that's all.

Question: That was a half-truth, wasn't it?

Answer: No, it was a sin of omission. (Hearing on motion 7/18/73 T. vol. I, p. 115)

• • •

Question: Each time you were asked, and specifically, what was the consideration in exchange for your testimony?

Answer: That's correct.

Q. And each time you withheld the fact that there was a promise to return money to you that was confiscated and that you had bargained for immunity for your brother and got it?

A. um-hum. That's correct. (Hearing on motion 7/18/73 T. vol. I, p. 116)

• • •

Q. I read to you the testimony in which you said that as part of the arrangements your brother was to be given immunity.

"A. I recall saying that, yes.

"Q. Was that true or false?

"A. That was true. (Hearing on motion, T. vol. I, p. 117)

• • •

"Q. You had three opportunities in three trials to state what your arrangements were.

"A. Specifically what the arrangements were?

"Q. Yes.

"A. And I didn't; is that what you are saying?

"Q. That's right.

"A. If that's what it is, that's what it is" (Hearing on motion T. vol. I, p. 117)

• • •

ARTHUR J. MURGO, appearing as a witness during the hearing on the motion 7/18/73, testified as follows:

Q. Mr. Murgo, do you recall that sometime in 1969 that some arrangement had been made to give testimony?

A. Yes.

Q. And did you have some conversations with Ralph about that? Ralph Maselli?

A. Yes, the end of August or first day or two in September, yes.

Q. Now, concerning the conversation you had with Ralph at that time, what did he tell you, if anything, about immunity.

A. He told me that he was granted immunity, and that he would be getting this, some money, from the government, that they had taken out of his home.

Q. And were you aware of that money?

A. Yes, I notified the New Jersey bank that it was stolen, and that Ralph Maselli was going to be turned back over to him that money, and I notified the bank in New Jersey and I notified the United States Attorney that this was stolen bank money. And it was fruitless.

I mailed two or three letters to the New Jersey Bank. I talked to the New Jersey bank, telling them that the government was about to give Ralph Maselli their money, in exchange for whatever he had promised . . . (hearing on motion 7/18/73 T. vol. I, pp. 141-142)

. . .

Q. And that money was taken from his home, that was —

A. That was stolen bank robbery money. It was money we had turned over the day before. I was the first one. The morning of Saturday, November 8th or 9th, I realized my house was under surveillance, and I called them up and told

him my house was under surveillance and I told him everybody clear out.

The COURT. You told who?

The WITNESS. Ralph, Maselli — that he should clear out. At that time he had already — where I talked to him, it wasn't at his house, I think it was at his brother's or something. He had already cleared out.

And he told me — we all had \$8,000; I had \$8,000 and he had \$8,000 . . . he told me he had already taken \$2,500 or something to pay a loan shark that he had to pay, and he left the remainder of the money in his house, which the police confiscated.

The COURT. How did you get \$8,000?

The WITNESS. Me and him had robbed a bank two or three days before.

The COURT. Where was that?

The WITNESS. In New Jersey. And this is money that we had turned over. It was all hundred bills. I was lucky; they didn't get nothing from me. I knew my house was under surveillance and I took off. They got no money from me. But he had already left — he had \$2,500 to pay a loan and he paid the loan and the rest of the money was in his house.

By Mr. Fasano:

Q. That money he had was money that had been exchanged for the stolen money?

A. That's correct. (hearing on motion 7/18/73 T. vol. I, pp. 143, 144.)

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JOHN V. CASSIDENTO in the hearing on the motion, appearing as a witness testified:

That from June of 1966 to September 15, 1969, he was an Assistant U. S. Attorney (hearing on motion 7/25/73 T. Vol. II, pp. 154-155)

• • •

Q. Now during your tenure in the United States Attorney's Office did you have occasion to handle any criminal matters involving Ralph Maselli?

A. I did.

Q. And did you have occasion to deal with Mr. Maselli in relation to those matters?

A. I did.

Q. And in what connection have you had contact with Mr. Maselli?

A. With respect to making a promise of non-prosecution with Mr. Maselli, in return for his truthful testimony, you might say, in various bank robbery cases which were up to that point unsolved. (Hearing on motion 7/25/73 T. vol. II, p. 156)

• • •

Q. Now, beginning with May of 1969 could you outline the contacts that you had with Ralph Maselli concerning his cooperation and consideration in return for his cooperation?

A. Yes.

• • •

Mr. Connolly, Agent Connolly, came to me with a proposition. I don't know whose idea it was but it had to do with what the government could do for Ralph Maselli in return for

his testimony. (Hearing on motion 7/25/73 T. vol. II, pp. 158, 159)

. . .

Q. Now, with whom was your initial discussions concerning the monies seized from the Maselli brothers home?

A. My initial discussions were with Agent Connolly.

Q. And did there come a time when you discussed that, the seized monies, with Ralph Maselli?

A. Yes, I did.

Q. And approximately when was that?

A. It was after we formulated the deal, where I promised immunity. (Hearing on motion 7/25/73 T. vol. II, pp. 162, 163)

. . .

That the deal with Ralph Maselli was formulated around July or August; that the commitment was made on the authority of both Mr. Barnes and Mr. Lynch; that it was not a grant of immunity; it was a promise of non-prosecution, and to permit him to make that deal, he had to get authority from Mr. Lynch who ran the organized Strike Forces in the United States — or at least for that territory which included the District of Connecticut.

That as a result of his conversations with Mr. Connolly or with Mr. Lynch and Mr. Barnes, he told Mr. Maselli that for promise to cooperate with the government that the government would not prosecute him for any of the bank robberies in which he was implicated. (Hearing on motion 7/25/73 T. vol. II, pp. 164, 165)

. . .

That after the deal was made with Maselli, Agent Connolly told him that Ralph Maselli asked about the return of certain monies which were seized as a result of a state search warrant served on his home and his brother Mathew's home; that he told Agent Connolly that Maselli could have returned to him all of the money that was not part of the bank loot, the robberies of the Camden, New Jersey and Hamden, Connecticut which occurred on the same day. (Hearing on motion, 7/25/73 T. vol. II, pp. 166, 167)

Q. When you left the office in September, 1969, or any time thereafter, did you ever have occasion to relate either to Mr. Sagarin or Mr. Crane your representations to Ralph Maselli, in returning the seized money?

A. I did. I told him the whole story.

The COURT. You told each of them or one of them?

The WITNESS. Each of them, if Your Honor please. And I'm quite sure I indicated that the money, other than the stolen money should be returned to Maselli. (Hearing on motion, 7/25/73 T. vol. II, p. 169)

. . .

That the deal with Ralph included the return of confiscated money to him in the manner he had described and implicit in the deal he had made with Ralph Maselli was that his brother Mathew would not be prosecuted. (Hearing on motion T. vol. II, pp. 181, 182)

"Q. The promise that was made to Ralph, Ralph Maselli?

"A. The promise of non-prosecution of Ralph was made to Ralph.

Q. To Ralph and along with that promise for immunity you state it was implicit so that Ralph understood that Mathew Maselli would not be prosecuted for anything he was involved in? That's correct, isn't it?

"A. Mr. Fasano, I'm trying to be as candid as I can. Mathew was never promised immunity. However, implicit — and I can't tell you what words passed, but it was implicit that both Ralph and I knew that we would not prosecute Chickie." (Hearing on motion T. vol. II. pp. 187-188)

° ° °

MATHEW MASELLI appearing as a witness testified:

That he is the brother of Ralph Maselli. (Hearing on motion Vol. II, p. 193)

That he had an understanding that was related to him through his brother that he would not be prosecuted, (Hearing on motion, Vol. II, p. 200); he got paid for exchanging the stolen money (Hearing on motion, T. Vol. II, pp. 203, 211); that he also received a share of the money taken in the Camden, New Jersey bank robbery (T. 203); that the day following the robbery of the Hamden Bank, his home was searched under the authority of a search warrant issued November 9, (See Ex. 2) and \$2,198.00 was seized (Hearing on motion T. Vol. II, pp. 206, 207); that the day before on November 8, he had been identified as the person exchanging small bills for larger bills at various banks (Hearing on motion, T. Vol. II, p. 209); that he had received \$1,000.00 which he turned over to Ralph in accordance with agreement which he had with Mr. Crane that Ralph's money would be returned to him. (Hearing on motion T. Vol. II, pp. 113, 214, 215)

° ° °

EDWARD REED appeared as a witness on his own behalf and testified:

That while he was preparing his trial for the South Norwalk trial, (Criminal No. 12,580), Devlin was a fugitive from justice; that the full weight of the United States Government was looking for Devlin who was on the list of the top ten most wanted men (Hearing on motion, T. Vol. II, p. 257); that in the spring of 1971, information came to him about Ralph Maselli having received money from the government through letters from his family, three newspaper articles, published in the Hartford Courant, and from George Johnson who notified him that he was going to pursue the matter on his behalf; that he did not commit the bank robbery (Hearing on motion T. Vol. II, p. 258); that he did not testify at that trial on the advice of counsel; that he had told his attorney that he had not committed the bank robbery (Hearing on motion T. Vol. II, p. 259); that he did not commit the bank robbery at the Colonial Bank in Meriden, Case Criminal No. 12,604 (Hearing on motion T. Vol. II, p. 267); that he testified in Case No. 12,604, but was found guilty (Hearing on motion, T. Vol. II, pp. 268, 270, 271). In the cases in which he did not testify, he followed the advice of counsel although he himself was ready and willing to testify (Hearing on motion T. Vol. II, p. 272).

RICHARD P. CRANE appearing as a witness on behalf of the government, testified:

That he was an Assistant United States Attorney in the District of Connecticut from November 5, 1968 to September 30, 1970 (Hearing on motion, T. Vol. II, p. 287); that in a conversation with Mr. Cassidento, Mr. Cassidento stated to him that

the understanding that he had with Ralph Maselli concerning monies seized in his house that they were to be returned to Mr. Maselli if they were not proceeds of bank robberies. (Hearing on motion T. Vol. II, p. 289)

That he had seen the application for the search warrant and knew after reading it that there had been a bank robbery in Hamden the day before the warrant was issued on November 9, and two days before on the 7th, the Second National Bank in Hamden had been robbed and that on the same day there had been a robbery at the bank in Camden, New Jersey, in which Ralph Maselli participated (Hearing on motion, T. Vol. II, p. 294); that he was aware of the fact that the day following these two robberies the application for the issuance of the search warrant set forth that Ralph Maselli, Mathew Maselli and Arthur Murgo exchanged stolen bank robbery monies in different banks for money that would not be traced as bank robbery money (Hearing on motion, T. Vol. II, p. 294); that he felt that there the inference that the money seized by virtue of the search warrant might be bank robbery money (Hearing on motion, T. Vol. II, pp. 295, 297).

That he had no discussion with Assistant District Attorney, Cassidento before he left office as to what promises had been made to Ralph Maselli (Hearing on motion, T. Vol. II, p. 308).

DANIEL SAGARIN called as a witness testified:

That he was Assistant United States Attorney for the District of Connecticut from September 1967 to May 1970. (T. 7/31/73, p. 2).

• • •

The COURT. When did you make the agreement and with whom?

The WITNESS. My recollection is that it was made with Mathew Maselli before — probably after the gun case and before the Fairfield County Trust Case. And my recollection was that I was the responsible person in the Government for making that deal.

The COURT. You made the agreement with him?

The WITNESS. Yes (Hearing on motion, T. of 7/31/74, pp. 30-32).

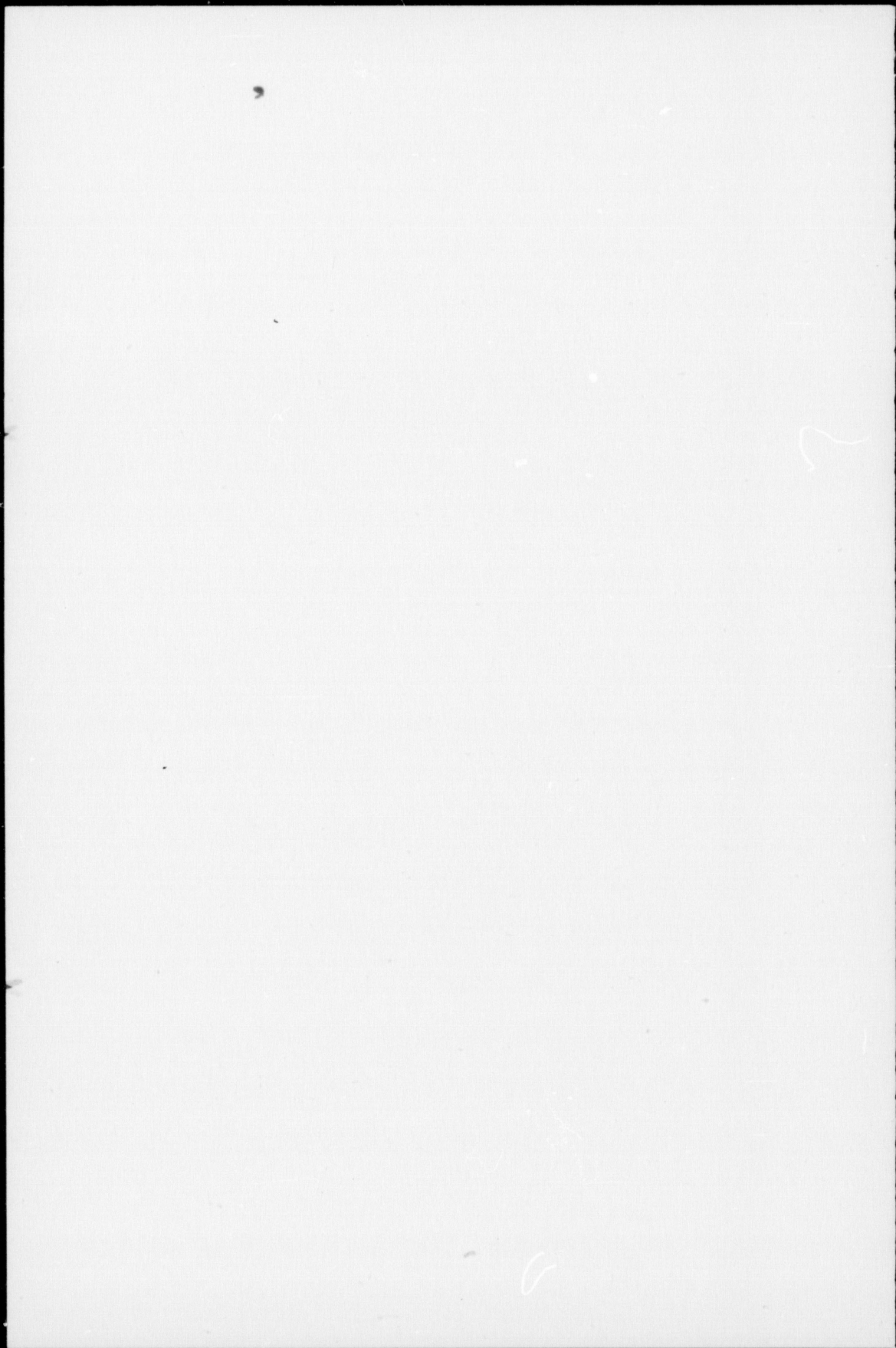
* * *

Q. Was there any agreement with respect to any gun charges with Ralph Maselli or Mathew Maselli, rather?

A. I'm certain that whatever agreement we had with Mathew Maselli would have covered all the federal charges which were outstanding.

Q. So that —

A. In other words, Mr. Fasano, I don't know, to be responsive to your question, to get Mathew Maselli to testify we would have — I haven't looked at it, but we would have agreed to drop the prosecutions to known charges that had been returned in indictment or of pending investigations. (Hearing on motion, T. of 7/31/73, pp. 32-33).



IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

VS.

DOCKET NO. T-3330

EDWARD W. REED

PROOF OF SERVICE
OF THE BRIEF AND APPENDIX FOR THE
DEFENDANT-APPELLANT

I hereby certify that on November , 1974 the undersigned personally delivered to the Office of the United States District Attorney at 141 Church Street, New Haven, Connecticut, two duplicate copies of the brief and appendix of the defendant-appellant in the case of United States of America, Plaintiff-Appellee vs. Edward W. Reed, Defendant-Appellant, Docket Number T-3330 in the United States Circuit Court of Appeals for the Second Circuit.

Alfonse C. Fasano
Alfonse C. Fasano
109 Church Street
New Haven, Connecticut

Attorney for the Appellant

State of Connecticut)
) ss
County of New Haven)

November 29 , 1974

Personally appeared Alfonse C. Fasano who made oath to the truth of the foregoing statements pertaining to proof of service of the brief and appendix for the defendant-appellant in the above cause.

Victor P. Fasano
Victor P. Fasano
Commissioner Of The Superior Court
For New Haven County